

**Village Council
December 6, 2010
6:30 PM
Minutes
Public Hearing**

Call to Order: Mrs. Rush-Ekelberry called the meeting to order at 6:30pm.

Roll Call: John Bender, Rick Deeds, Steve Donahue, Bobbie Mershon, Marilyn Rush-Ekelberry, Leah Turner

Mr. Donahue moved to excuse Mr. Wynkoop; seconded by Dr. Bender.

VOTE: **AYES** Dr. Bender, Mr. Donahue, Mr. Wynkoop
Mrs. Rush-Ekelberry, Mrs. Turner, Mr. Deeds

NAYS

Motion passed.

Purpose of the Public Hearing: To hear public comments on the Appeal filed by Michael Stobart and John & Kim Stedman of the decision of the Planning and Zoning Commission regarding the approval of Variance VA 10-07 to vary the forty foot (40') height restriction for a proposed development at 45 East Waterloo Street.

The Planning and Zoning Commission at their October 11, 2010 hearing approved the variance.

Presentation to Council:

Staff Report -Andrew Dutton

This pertains to section 1153.12D regarding the setback and 1167.04B1 regarding the structure height. Mr. Dutton showed maps on the overhead and gave an overview of the process through which they are going. At this time, the only thing that has been approved by Planning and Zoning are the variances. The site development plan was tabled at the applicant's request. After P&Z, the application will have to go to Landmarks Commission for a certificate of appropriateness and they apply the principals of the Preservation Guidelines. At this time, the site plan and the Preservation Guidelines are not applied; just the two sections of the zoning code to the variances. Following this, it will have to go to the Tech Review group for engineering plan review and will need a flood plain develop permit which will be reviewed by staff and possibly FEMA. Finally, it will go to a commercial building plan review. All these steps must be completed before anything can start on the project. Currently the project is on step one.

The requirement for the setback is the average of the adjacent buildings, which in this case is seven feet. The applicant has proposed a 0 foot setback.

The requirement for height is 40 feet / three stories; what they are proposing is 42 feet and three stories. The criteria for approval were included in the packets.

Mrs. Mershon asked about the flood plain issue and whether the fact that they may have to raise the grade to get out of the flood plain would change the calculation of the height of the building. Mr. Dutton stated that it would not, as it is determined from the grade to the top of the building, not from the sidewalk.

Mr. Chris Strayer, Development Director, gave another overview of the development process. IT was in the form of a memorandum in the agenda packets.

1. The application is submitted and we are legally obligated to take in every application and put it through the process.
2. Planning Commission - site plans, variances, conditional uses, etc
3. Landmarks Commission – architectural design
4. Technical Review Committee – engineers and public works department; if there are large errors or changes that need to be made to the site plan, it would have to go back to Planning Commission for re-approval.
5. Building Department – plan review, comments back to property owner / land owner, then when site plan is finalized and approved, then building permits are issued.
6. Construction can begin and then inspection process begins.
7. Final Certificate of Occupancy.

Mrs. Mershon asked what happens if FEMA comes back to say the ground has to be built up 5 feet. Would it become a Landmarks issue that the building would then be so much taller than the other buildings? It could be a Landmarks issue or a Planning Commission.

Mr. Gene Hollins addressed the residents and stated that this Council is sitting in a judicial role this evening. They are looking over P&Z's decision to approve these variances. In their judicial capacity tonight, they cannot look into other issues. This debate will not come to a big conclusion this evening. To the extent that residents address the 40 height standard and the setback, the more weight and relevance will be given to your comments.

There is a court reporter in the building tonight and a verbatim report will all be a part of record.

Planning & Zoning Commission - Bill Christensen

Standard procedures were followed and they spoke through their written decision. Mr. Christiansen has nothing to add unless Council has questions for him. Dr. Bender asked what other buildings in the Village are 40 feet or higher. It was stated that the only other building in downtown that is three stories is the Fitness Firm building, but he is not sure if it exceeds 40 feet in height.

Mr. Hollins clarified that no decision will come tonight. There will be a written decision presented at the next Council meeting. Anyone that would be speaking tonight was sworn in.

Appeal Applicants - Michael Stobart and John & Kim Stedman

Michael Stobart, of 15 E Columbus Street, stated that he lives on the Founder of Canal Winchester, Ruben Dove's homestead. His daughter, Delilah Dove Whitehurst built the house he lives in in 1865. He feels he has a special obligation to the community given the location of his residence. He grew up in Canal Winchester and moved to Farmington, Connecticut for several years. That town was founded in 1645 and they have managed to maintain its historic character

by careful Zoning and Planning. When he came back to Ohio, he wanted a historic home with those same protections and to date they have been. He wants to ensure that we do not forget the history of the Village. This building is too tall and he charges that the decision of P&Z was absent of any consideration of the criteria needed to approve the variance.

With regards to the concern of the height of the building, he submitted many photos of adjacent homes; all of which are one and two story homes. There isn't a single three story building adjacent to the property. If the NRP group wants three stories, they can achieve that within the 40 foot guideline. This was not a matter of a 2 foot variance. If this variance was approved, they could build a 50 foot or 100 foot building. There was no restriction placed on the variance, so until the final site plans are received, you won't know what the ultimate height of the building will be.

Section 1131.05 of the Zoning Code notes that it sets forth the minimum requirements and when it is in conflict with any other law, the most restrictive law will be imposed. That property falls within the Old Town Overlay district and is governed by the Preservation Guidelines. In cases where the requirements conflict, Old Town overlay district rules shall supersede the underlying zoning district. Page 60 of the Preservation guidelines states that new building heights must be compatible with that of existing adjacent buildings. They should have the same number of floors and be within 10% of the average height of adjacent buildings on the street. All of the adjacent building is one or two stories with the average height of 22 feet. At 42 feet, the new building would be 62% taller than the average height of the adjacent buildings; more than 6 times the preservation guidelines of 10%. Because of the flood plain, it will most likely be even higher. According to section 1147.03 of the zoning code, all factors shall be examined in the review.

There are buildings today that do not meet the code for setbacks. Those are non-conforming uses and would have to meet code should they be re-built at any time. The fact that an existing building today has less than the existing requirements is not violating the zoning code. Mr. Stobart cited several codes within the zoning code and preservation guidelines. He also warned that an overlay conditional use request will be coming when they try to put residential on the ground floor. If this were granted, it creates a situation where you are conferring a privilege on the applicant that no other citizen currently enjoys.

Section 1147.02A mandates that the request for variance be made by the property owner or the lessee of the property. NRP Group / Wagenbrenner are neither the property owner nor lessee of the property. The application could have been filed by Guernsey Bank or one of its representatives with power of attorney to be filed in compliance with the zoning code. Though, Mr. Strayer stated that they have to accept any application, they do not and should not accept applications improperly filed.

Mr. Stobart respectfully requested that the Variance approval be overturned by Council for the foregoing reasons.

The site plan has not been brought to the table, but preliminary discussions seem to show that this will be a solely residential property. This is neither a permitted or express conditional use allowed under the zoning code for either General Commercial or the Overlay District. You should expect additional appeals from the citizens of the Village of Canal Winchester.

The property owned by the Village located at 15 Trine Street was purchased for \$80,000 of tax payers money is included in the sketch of Davis Property that is advertised for sale. He asked

what action has the Council taken to sell or provide for an option to purchase for this project and what are councils intentions with regards to this property.

Mr. Hollins stated that he can get a written option agreement to Mr. Stobart and that the consideration has to do with using it for additional public parking.

The appeal today is limited solely to the variance and not to the proposed design of the complex. While many citizens have signed petitions against what they believe this project will be, they do not know the final design; therefore do not know how they will ultimately feel.

Kim Stedman, of 38 E Columbus Street, talked about adverse effect on the convenience and general welfare of our residents. In 2009, there was a survey of the residents asking why they liked to live in the Village. Nearly 100% of the residents indicated that they liked to live in the Village. The factors that influenced their quality of life were the downtown historic nature of the community, quaint village and small town feel. Their number one complaint was too many apartments.

The high density in the downtown was discussed. This project will produce congestion in the downtown area; bringing in possibly 100 new residents and putting a strain on the public parking spaces. There will be a new stress put on the Senior Transportation system and services available to the seniors. Mary Hada speaks regarding the project and seems to preface her statements with the word “generally”. That means she is guessing. The green space is inadequate for this high-density.

Mr. Strayer stated that this is just the beginning of the process and that it has to go through much more before being approved to start building. Ms. Stedman stated she received a letter from NRP group in September that stated they had been working for months with staff from the Village. On Nov. 15th, she spoke to the Vice President of NRP and asked who they had been talking to at the Village and he stated that he had been talking to Mr. Strayer, Mr. Hollins and the Mayor.

She is asking that Council make a decision not to court these people. She wants Council to make a motion to not sell any of our property to these people to use for their own profit. Please don't table it, don't put it aside... make a decision and make the right one.

Mr. John Stedman, of 38 E Columbus St., added that they had a meeting with Wagenbrenner and the NRP group and asked why they didn't design the property within the Preservation guidelines. He was told that those are just guidelines. Is that the type of person that we want developing our community? He doesn't care and will do whatever it takes for him and his company to make money. He expects Council to reverse the decision of Planning and Zoning.

He addressed the safety concerns of the residents regarding the project. Mary Hada says that we shouldn't worry about who is living in the building because there is always one “Gestapo resident” that will tell on them. He isn't going to rely on a “Gestapo resident” to keep their kids safe.

When P&Z made the decision on the levy to look at the minutes of some prior meetings, they had obviously already made up their minds prior to the meeting. We owe it to the tax payers to look out for the best interest of the community and overturn the P&Z decision.

Variance Applicant - Representative of Wagenbrenner Development

Jeff Brown, of Smith and Hale law firm, spoke on behalf of the applicants. He is a zoning attorney and would normally be discussing the merits of the project, but in this instance he is here on more of an official role. He reminded speakers that we aren't here to talk about site plans or "Gestapo" residents, but only the variances.

Mr. Brown asked that the record of the planning and zoning meeting on October 11th be made part of this record.

Mr. Brown handed out a memo to Council members and Mr. Hollins.

He submitted drawings of the site plan, the building elevations and some character drawings of some other buildings in the Historic Downtown that were used in terms of developing the site plan and building elevation.

Mr. Brown submitted a letter dated November 2nd from Guernsey Bank stating that Wagenbrenner is authorized in terms of the application

What we are dealing with is highly technical and pretty boring in terms of a zoning hearing. Several residents filed an appeal, so he is here. Planning and Zoning made a decision and the variance specifically states the change from 40-42 feet, unlike what the first speaker noted. The idea that this building could all of a sudden be 50 or 100 feet is simply untrue. When the appeal was filed, they only appealed the height issue. He will discuss the setback because it was brought up, but it is not part of this appeal.

Mr. Brown objected to any discussion to the setback variance because it was not included in the appeal language.

Mr. Brown objected to all of the testimony of Mr. and Mrs. Stedman, as it did not relate to the appeal in question.

Mr. Brown brought forth several legal arguments, the first of which regards standing (status in order to bring an appeal). The zoning code talks about aggrieved or affected individuals. These residents are not adjacent property owners and have not shown any unique harm to them, but have cited suffering by the community at large. Under the various court cases, that is not sufficient. Therefore, he submits that the people that brought the appeal do not have standing.

The Findings of Fact and Conclusion of Law states that the Preservation Guidelines are applied after the appeal of the overall development plan and building architecture from the Landmarks Commission. That has not happened at the Planning and Zoning meeting; therefore the Preservation Guidelines do not apply to this piece of property. Their inclusion in the appeal is inappropriate and cannot be considered by the Council.

There is a duty of the Planning and Zoning administrator to return the application if there is a problem with it. Emails were communicated between the parties and the Village noted that the signatures of the property owners were not necessary, as Wagenbrenner was authorized to handle that application.

The other five factors that were brought out in the code tonight were not raised in the appeal; therefore he is to assume that they agreed with the Planning and Zoning Commission that they met those requirements.

When the law in the State of Ohio for area variances is looked at, the judicial test is practical difficulties. There are court cases that outline the various criteria that need to be considered.

The Duncan case is an example of this and shows that a property owner cannot be denied the opportunity to establish practical difficulty just because he knew of the zoning restrictions when he bought it. On that basis, there is enough evidence here to uphold what the Planning and Zoning Commission did.

When you look at the Statement of Fact, they went through the analysis of the heights of adjacent properties and setbacks in the Historic District. It was found that we were in character with area and that many of the businesses are up at the street. In terms of the design of the building, they did a pitched roof. The pitched roof is the only thing that is at 42 feet. It was found that this is a minimal variance.

The last thing with the Duncan standards deals with the court requirements as to what they have to look at to determine this finding. All 7 standards do not have to be met. In terms of the appeal, they have conceded 5 of the standards and we are now just discussing the remaining two. Whether the variance is substantial is in question and the change from 40-42 feet is not substantial. The change from 7 to 0 feet setback is actually the setback for the porch. The building moves in and out and the building is 4 ½ feet from the property line.

The essential character of the neighborhood will not be substantially altered and there would be no negative impact on governmental services. No other method would provide a solution without this variance. The whole downtown area is set close to the street now and encourages walk-ability.

The requirements have been met and you have the decision of Planning and Zoning. Council has what it needs to affirm current decision. He reminded Council that the height variance is the only issue in front of them tonight.

Village Resident Comments:

(Five Minute Limit per Person)

Mr. Brown objected for the record to additional testimony from the public as it is a judicial hearing and the only relevant testimony is from appellant and the applicant.

John Demkowicz, of 70 E Columbus Street, compliment learned Counsel on his explanation of the technicality of the issue, but believes that he will be earning his salary in spades in the future as no one wants this project to go forward.

Robert Stedman, of 18 E Mound Street, asked to yield his 5 minutes to Mr. Stobart.

Michael Stobart noted that there is nothing in the notice of appeal which would limit the appeal to the variance 1167.04B1. There were four major sections of this notice of appeal, the first being the height in contravention of the preservation guidelines. The three other sections of it indicated that the approval of the variance will confer an undue privilege that is denied in the zoning code for other properties; that is not limited to the height.

Mr. Hollins stepped in and offered the possibility of Mr. Stobart filing a brief and Mr. Brown filing a reply brief. Mr. Hollins advised Council to give them the opportunity to file a post hearing brief.

Mr. Stobart noted that Mr. and Mrs. Stedman do have legal standing and discussed the effect of the project on their property and the definition of adjacent. Briefs will be filed for further information.

Paul Ouelette, of 6691 Lakeview Circle, stated that the applicant sent in a lawyer for this appeal. He stated that this is as open hearing for the residents of Canal Winchester for the construction for the construction of housing for senior citizens. He then requested that he yield the rest of his time to Don Corbett.

Don Corbett, of 6678 Lakeview Circle, said he got a little nervous with all the legal talk. He'd like to bring it back down to the real issues. NRP has filed a city hall racketeering charge against a Mayor in Cleveland with a housing project and showed an article about NRP titled "Uncovering Hidden Ties between State Representative Jose Menendez and Florida". These just are something to consider.

No one in here opposes senior housing and believes that we need more of them. It is all about location. The proposed building is totally out of scale and presents a basic state of incompatibility. These people are right in what they are saying. They like where they live and they want to see it stay like that.

General welfare, safety and security issues were discussed. The fire department does not have a ladder truck that would be able to fight a fire at 40 feet. If they wanted one, they would have to go with mutual aid from Columbus Fire Department and logistically, there would be problems with the use of the ladder truck even should it be available. This information came from the driver of the ladder truck. He also wanted to discuss the distance between Dr. Grammel's office and the building and that would further hamper rescue efforts. What about the senior aspect. With the age being 55 and older, response time should be quick on medical runs. With the large number of children in the surrounding neighborhood, all the bus stops are on the corners. They are already hard to see... time ran out.

Discussion ensued regarding whether Mr. Corbett could have more time to speak. Ultimately, Mrs. Rush-Ekelberry gave two more minutes.

Security concerns include the vetting system. The developer is on their own as to finding out the backgrounds of those that will be living there. Unauthorized occupants will always be a problem. If grandma lives there and kids or grand kids need a place to stay, they will be staying there. It doesn't matter if they just got out of jail.

They can't answer if they can monitor the ingress and egress points. He spoke to the Vice-President of OHFA, Joe Largery, and was told that they don't have the disposable income to track these issues. He presented many packets relating to low-income housing and landlord training.

Pat Burks, of 29 W. Mound Street, stated that he and his wife tried to get nice vinyl windows put into their house and were denied because it went against the code. Why would you give an out of town person variances to do something that people don't even want and isn't good for Canal Winchester.

Mark Miller, 22 W Mound Street, stated that it appears that we have greased the skids for development to the point that residents who are learning about it late and coming to the realization that they are outraged. He believes that Council is elected to work for the citizens of this Village and urges members to remember that elections do come back around. He stated that the codes and guidelines that have been put in place by the citizens have put in place, were put there for the primary reason of guarding the health, safety and welfare of the entire community, not just the adjacent property owners.

He would guess that the building will end up taller than 42 feet. There will have to have a water tank on top to supply a sprinkler system. He also doesn't want to have to buy a ladder truck. It won't be a choice for the taxpayers; it will just be forced on them.

Council members must think about setting precedence for future developers in the Village.

He questions the "introduction of a bunch of stuff to the record tonight". If it was not properly introduced in the hearings and meetings to which it should have been recorded, it is improper to take it in tonight just to pad a court case later.

He encouraged the Council to discard the decision of the commission before them. He asked at what future points the general public will have an opportunity to involve itself in the process of approval and land review, in meetings with the Development Department and where he can talk about more than the 40 foot height of the building. He feels he has been kind of gagged tonight with that restriction.

Julie Cecutti, of 17 W Mound Street, stated that "those who do not learn from history are doomed to repeat it." There seems to be a lot of déjà vu here tonight. She stated that all of the things that have been decided for the Historic and overlay districts were not rash decisions. We should stick to those guidelines unless there is a really, really good reason not to. We don't have the kind of downtown that can support that type of project. She believes that there are a lot of people that stand to gain a lot of money from one piece of property. Please don't back down. If we own some of the land this developer wants, don't just hand it over. This is the last viable spot of land in the downtown district. We should give it a lot of thought before developing it.

Pat Lynch, of 27 E Columbus Street, stated that it was obvious that Mr. Brown is a lawyer and not an architect when he stated that this project is not out of character in the Village. Has anyone bothered to take the time to find legal counsel or advice on this issue? Isn't this really an aesthetic problem; an architectural problem? It's not a lawyer problem.

He visited four different architects on this project to get outside opinions. When the variance was passed, 5 people voted for the approval and 1 person voted against it. That person knew it wasn't right for this Village. Every one of the architects that looked at it said it is out of scale... out of proportion for the Village.

We have two great assets in this Village; the people and the historic nature of the town. We need to respect the opinion of those people.

Some people say we are a bunch of elitists who are against senior citizens and against low-income. He passed out a hand out that showed four low-income senior housing developments in the area already. We have 21 times more low-income senior housing than Reynoldsburg. We want to protect the downtown area. We aren't against senior housing, but would like to benefit the seniors of Canal Winchester. He told a story of a 40 year resident of Canal Winchester that is legally blind and hasn't qualified for the low-income housing. She wouldn't qualify for the new project either. Who is looking after our seniors?

Cyndi Lynch, of 27 E Columbus Street, thanked Mrs. Mershon for coming to a "CW Residents for Responsible Growth" meeting. She was the only one from Council that showed up to get all the facts before coming here tonight. She asked Mr. Strayer about the 2007 survey and how many people over 55 that already live in this community would be able to go into that project. She stated that only 4% of our residents would qualify. The survey says that we need senior housing, NOT low-income senior housing. We already have low income housing for that 4%. She feels like many people are speaking and no one is listening to them. She stated that Mrs. Rush-Ekelberry should be ashamed for coming up to her earlier and telling her that what she was doing was a crock. She suggested that Mrs. Rush-Ekelberry shouldn't be voting if she has already made up her mind before the Public Hearing.

Mrs. Rush-Ekelberry interjected and clarified that her comment was toward the signs around the Village and noted that some of the signs are on private property.

If someone wanted information, they could have asked. She respects Mrs. Mershon for coming to the meeting to listen. She may not agree, but at least she listened.

Alec Mitchell, of 93 E Columbus Street, stated that he is an engineer and works for the Red Cross as an instructor. He considers fire safety a big issue and is the groundwork for the design. This design seems to have started with how many people can they get in there and how much money can they make, with safety as a side note.

The lawyer, Mr. Brown, spoke very authoritatively on concerns; stating that many problems would NOT occur. Without proof of those things, you can't make those assumptions.

There is a unique connection to be able to speak at these meetings and anyone who lives in the Village has a unique connection with this issue.

People are attacking us because we are a small town and think that we will roll over easily.

Alison VanArtsdalen, of 265 Jones Place, has grown up in Canal Winchester over the last 22 years and many changes have taken place. Gender Road has changed and the school district has changed. By allowing the people that have come into the school district to come into the downtown area, there will many more negative changes. There will be senior citizens, but there will also be people there that aren't authorized to live there. The crime rate will rise and cause problems that will cost tax dollars.

Marshall Crabtree, of 116 E Columbus Street, is retired from the US Navy, as is her husband. They both worked at the Pentagon before moving here and though they loved it, they moved when he was injured and lost his eyesight. This is the one place that her husband knows by heart. He cannot see one thing. People who pass him on the street know him. This IS small town. Their house is 110 years old and she doesn't want to lose that charm. Visitors from out of town say that this is such a neat little place. We need to keep this uniqueness.

Gary Bumpus, of 108 Beaty Street, has concerns from being in the design field for many years. He is a landscape architect and gets to consult with architects and developers. He believes that the problem that we have with this piece of property is huge in comparison with any other piece of property in the downtown. Even the way it is zoned now, you can build a huge building. The variance is pretty insignificant. It is too bad that the Village is stuck with that piece of property that will probably be overdeveloped. He discussed Urban Planning and how it relates to rural areas. Canal Winchester has a very small downtown and it can be easily destroyed.

It is preferred when developing a street that you respect what's across the street from it. There is nothing that exceeds two stories across the street and there are even some one story buildings. It is just huge and out of place. It would be a great place for residential and commercial buildings. He doesn't care about the residential aspects, but the buildings need to fit in.

Susan Stedman, of 6540 Hill Rd, pointed out that we all have an obligation to help the community and the seniors in the area. However, we should take a look at the whole picture. Talk to the bus drivers who pick up the kids from the low-income housing. Ask how many of those kids are sitting in their grandparents cars because they aren't being raised by their parents. Look at the whole picture, not just the aesthetics.

Council Comments/Questions:

Mrs. Mershon asked Mr. Hollins if they can review it in light of the Preservation Guidelines. Mr. Hollins stated that there are two very well-argued positions on that. One has been addressed already and the other will be argued in an up-coming brief from Mr. Stobart. Council can read both briefs and make their own decision.

Mrs. Turner thinks it great that so many really young people are here tonight taking an interest in the welfare of the Village.

Mr. Hollins stated that we should expect a little written order about how much time each person has to file a brief. We will shortly get that issued.

He also noted that he is hearing the overtones of a conspiracy theory about it bringing brought forward. We encourage folks to talk to the residents before bringing any application forward. The code states that we would like developers to meet informally with residents. There was no conspiracy.

Mrs. Rush-Ekelberry stated that everyone's attendance was appreciated and Mr. Deeds encouraged people to come to meetings in the future.

Adjournment

Mrs. Mershon moved to adjourn the meeting and was seconded by Mr. Deeds.

VOTE: **AYES** Dr. Bender, Mr. Donahue, Mr. Wynkoop
Mrs. Rush-Ekelberry, Mrs. Turner, Mr. Deeds

NAYS

Motion passed. Time out 8:28pm